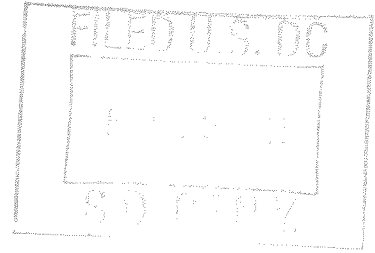


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



-----X  
DAVID B. NEWMAN and IRA F/B/O DAVID  
NEWMAN-PERSHING LLC as Custodian, on behalf of  
themselves and all Others Similarly Situated, and  
Derivatively on behalf of FM LOW VOLATILITY FUND,  
L.P.,

Plaintiffs,

v.

FAMILY MANAGEMENT CORPORATION;  
SEYMOUR W. ZISES; ANDREA L. TESSLER;  
ANDOVER ASSOCIATES LLC I; ANDOVER  
ASSOCIATES MANAGEMENT CORP.; BEACON  
ASSOCIATES LLC I; BEACON ASSOCIATES  
MANAGEMENT CORP.; JOEL DANZIGER; HARRIS  
MARKHOFF; IVY ASSET MANAGEMENT CORP.;  
THE BANK OF NEW YORK MELLON  
CORPORATION; MAXAM CAPITAL MANAGEMENT  
LLC; MAXAM CAPITAL GP, LLC; MAXAM CAPITAL  
MANAGEMENT LIMITED; SANDRA MANZKE; and  
JOHN DOES 1-100,

Defendants,

and FM LOW VOLATILITY FUND, L.P.,

Nominal Defendant.  
-----X

No. 08 Civ. 11215 (LBS)

ECF Case

**NOTICE OF APPEAL**

Notice is hereby given that Plaintiffs David B. Newman and IRA f/b/o David B. Newman Pershing LLC as Custodian (together, "Plaintiffs"), limited partners of the FM Low Volatility Fund ("FM Fund"), on behalf of themselves and a class of persons similarly situated, and derivatively on behalf of the FM Fund, hereby appeal to the United States Court of Appeals for the Second Circuit from the Judgment entered in this action

on the 20<sup>th</sup> day of October 2010 (Dkt. 165) upon the Opinion and Order of the same date granting Defendants' motions to dismiss the complaint in its entirety (Dkt. 164). The Judgment and Order are attached hereto as Exhibits A and B. Plaintiffs further appeal from the Memorandum and Order of this Court entered on February 2, 2011 denying Plaintiffs' motion under Fed. R. Civ. P. 59(e) and 15(a) for relief from judgment and leave to amend the complaint (Dkt. 188) (attached hereto as Exhibit C).

Dated: February 16, 2011

WOLF HALDENSTEIN ADLER  
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